

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

GILBERT HINOJASA, RN

91576 Third Street
Mecca, CA 92254

Registered Nurse License No. 456896

Respondent

Case No. 2009-86

OAH No. 2009070278

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in the above entitled matter.

This Decision shall become effective on February 19, 2010.

IT IS SO ORDERED January 19, 2010.



President
Board of Registered Nursing
Department of Consumer Affairs
State of California

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Attorneys for Complainant

8
9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 2009-86

12 **GILBERT HINOJOSA, R.N.**

OAH No. 2009070278

13 **Mailing Address:**

14 **91576 Third Street**

Mecca, Ca. 92254

15 **Registered Nurse License No. RN 456896**

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

16 Respondent.

17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
18 entitled proceedings that the following matters are true:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) is the Interim Executive Officer of the
21 Board of Registered Nursing. She brought this action solely in her official capacity and is
22 represented in this matter by Ben E. Johnson, Deputy Attorney General, on behalf of Edmund G.
23 Brown Jr., Attorney General of the State of California.

24 2. Respondent GILBERT HINOJOSA, R.N. (Respondent) is representing himself in this
25 proceeding and has chosen not to exercise his right to be represented by counsel.

26 3. On or about August 31, 1990, the Board of Registered Nursing issued Registered
27 Nurse License number RN 456896 to Gilbert Hinojosa, R.N. (Respondent). The Registered
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1 Nurse License was in full force and effect at all times relevant to the charges brought in
2 Accusation No. 2009-86 and will expire on November 30, 2009, unless renewed.

3 JURISDICTION

4 4. Accusation No. 2009-86 was filed before the Board of Registered Nursing (Board),
5 Department of Consumer Affairs, and is currently pending against Respondent. The Accusation
6 and all other statutorily required documents were properly served on Respondent on February 11,
7 2009. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of
8 Accusation No. 2009-86 is attached as exhibit A and incorporated herein by reference.

9 ADVISEMENT AND WAIVERS

10 5. Respondent has carefully read, and understands the charges and allegations in
11 Accusation No. 2009-86. Respondent has also carefully read, and understands the effects of this
12 Stipulated Settlement and Disciplinary Order.

13 6. Respondent is fully aware of his legal rights in this matter, including the right to a
14 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at
15 his own expense; the right to confront and cross-examine the witnesses against him; the right to
16 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel
17 the attendance of witnesses and the production of documents; the right to reconsideration and
18 court review of an adverse decision; and all other rights accorded by the California
19 Administrative Procedure Act and other applicable laws.

20 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
21 every right set forth above.

22 CULPABILITY

23 8. Respondent admits the truth of each and every charge and allegation in Accusation
24 No. 2009-86.

25 9. Respondent agrees that his Registered Nurse License is subject to discipline and he
26 agrees to be bound by the Board of Registered Nursing (Board)'s imposition of discipline as set
27 forth in the Disciplinary Order below.
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DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Registered Nurse License number RN 456896 issued to Respondent Gilbert Hinojosa, R.N. (Respondent) is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions.

Severability Clause. Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

1. **Obey All Laws.** Respondent shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by Respondent to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this condition, Respondent shall submit completed fingerprint forms and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process.

Criminal Court Orders: If Respondent is under criminal court orders, including probation or parole, and the order is violated, this shall be deemed a violation of these probation conditions, and may result in the filing of an accusation and/or petition to revoke probation.

2. **Comply with the Board's Probation Program.** Respondent shall fully comply with the conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the Respondent's compliance with the Board's Probation Program. Respondent shall inform the Board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the Board, including during any period of suspension.

Upon successful completion of probation, Respondent's license shall be fully restored.

3. **Report in Person.** Respondent, during the period of probation, shall appear in person at interviews/meetings as directed by the Board or its designated representatives.

1 4. **Residency, Practice, or Licensure Outside of State.** Periods of residency
2 or practice as a registered nurse outside of California shall not apply toward a reduction of this
3 probation time period. Respondent's probation is tolled, if and when he resides outside of
4 California. Respondent must provide written notice to the Board within 15 days of any change of
5 residency or practice outside the state, and within 30 days prior to re-establishing residency or
6 returning to practice in this state.

7 Respondent shall provide a list of all states and territories where he has ever been licensed
8 as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide
9 information regarding the status of each license and any changes in such license status during the
10 term of probation. Respondent shall inform the Board if he applies for or obtains a new nursing
11 license during the term of probation.

12 5. **Submit Written Reports.** Respondent, during the period of probation,
13 shall submit or cause to be submitted such written reports/declarations and verification of actions
14 under penalty of perjury, as required by the Board. These reports/declarations shall contain
15 statements relative to Respondent's compliance with all the conditions of the Board's Probation
16 Program. Respondent shall immediately execute all release of information forms as may be
17 required by the Board or its representatives.

18 Respondent shall provide a copy of this Decision to the nursing regulatory agency in every
19 state and territory in which he has a registered nurse license.

20 6. **Function as a Registered Nurse.** Respondent, during the period of
21 probation, shall engage in the practice of registered nursing in California for a minimum of 24
22 hours per week for 6 consecutive months or as determined by the Board.

23 For purposes of compliance with the section, "engage in the practice of registered nursing"
24 may include, when approved by the Board, volunteer work as a registered nurse, or work in any
25 non-direct patient care position that requires licensure as a registered nurse.

26 The Board may require that advanced practice nurses engage in advanced practice nursing
27 for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

28 If Respondent has not complied with this condition during the probationary term, and

1 Respondent has presented sufficient documentation of his good faith efforts to comply with this
2 condition, and if no other conditions have been violated, the Board, in its discretion, may grant an
3 extension of Respondent's probation period up to one year without further hearing in order to
4 comply with this condition. During the one year extension, all original conditions of probation
5 shall apply.

6 7. **Employment Approval and Reporting Requirements.** Respondent shall
7 obtain prior approval from the Board before commencing or continuing any employment, paid or
8 voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all
9 performance evaluations and other employment related reports as a registered nurse upon request
10 of the Board.

11 Respondent shall provide a copy of this Decision to his employer and immediate
12 supervisors prior to commencement of any nursing or other health care related employment.

13 In addition to the above, Respondent shall notify the Board in writing within seventy-two
14 (72) hours after he obtains any nursing or other health care related employment. Respondent
15 shall notify the Board in writing within seventy-two (72) hours after he is terminated or separated,
16 regardless of cause, from any nursing, or other health care related employment with a full
17 explanation of the circumstances surrounding the termination or separation.

18 8. **Supervision.** Respondent shall obtain prior approval from the Board
19 regarding Respondent's level of supervision and/or collaboration before commencing or
20 continuing any employment as a registered nurse, or education and training that includes patient
21 care.

22 Respondent shall practice only under the direct supervision of a registered nurse in good
23 standing (no current discipline) with the Board of Registered Nursing, unless alternative methods
24 of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are
25 approved.

26 Respondent's level of supervision and/or collaboration may include, but is not limited to the
27 following:

28 (a) Maximum - The individual providing supervision and/or collaboration is present in

1 the patient care area or in any other work setting at all times.

2 (b) Moderate - The individual providing supervision and/or collaboration is in the patient
3 care unit or in any other work setting at least half the hour Respondent works.

4 (c) Minimum - The individual providing supervision and/or collaboration has person-to-
5 person communication with Respondent at least twice during each shift worked.

6 (d) Home Health Care - If Respondent is approved to work in the home health care
7 setting, the individual providing supervision and/or collaboration shall have person-to-person
8 communication with Respondent as required by the Board each work day. Respondent shall
9 maintain telephone or other telecommunication contact with the individual providing supervision
10 and/or collaboration as required by the Board during each work day. The individual providing
11 supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to
12 patients' homes visited by Respondent with or without Respondent present.

13 9. **Employment Limitations.** Respondent shall not work for a nurse's
14 registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a
15 traveling nurse, or for an in-house nursing pool.

16 Respondent shall not work for a licensed home health agency as a visiting nurse unless the
17 registered nursing supervision and other protections for home visits have been approved by the
18 Board. Respondent shall not work in any other registered nursing occupation where home visits
19 are required.

20 Respondent shall not work in any health care setting as a supervisor of registered nurses.
21 The Board may additionally restrict Respondent from supervising licensed vocational nurses
22 and/or unlicensed assistive personnel on a case-by-case basis.

23 Respondent shall not work as a faculty member in an approved school of nursing or as an
24 instructor in a Board approved continuing education program.

25 Respondent shall work only on a regularly assigned, identified and predetermined
26 worksite(s) and shall not work in a float capacity.

27 If Respondent is working or intends to work in excess of 40 hours per week, the Board may
28 request documentation to determine whether there should be restrictions on the hours of work.

1 10. **Complete a Nursing Course(s).** Respondent, at his own expense, shall
2 enroll and successfully complete a course(s) relevant to the practice of registered nursing no later
3 than six months prior to the end of his probationary term.

4 Respondent shall obtain prior approval from the Board before enrolling in the course(s).
5 Respondent shall submit to the Board the original transcripts or certificates of completion for the
6 above required course(s). The Board shall return the original documents to Respondent after
7 photocopying them for its records.

8 11. **Cost Recovery.** Respondent shall pay to the Board costs associated with
9 its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the
10 amount of **\$3,427.36**. Respondent shall be permitted to pay these costs in a payment plan
11 approved by the Board, with payments to be completed no later than three months prior to the end
12 of the probation term.

13 If Respondent has not complied with this condition during the probationary term, and
14 Respondent has presented sufficient documentation of his good faith efforts to comply with this
15 condition, and if no other conditions have been violated, the Board, in its discretion, may grant an
16 extension of Respondent's probation period up to one year without further hearing in order to
17 comply with this condition. During the one year extension, all original conditions of probation
18 will apply.

19 12. **Violation of Probation.** If Respondent violates the conditions of his
20 probation, the Board after giving Respondent notice and an opportunity to be heard, may set aside
21 the stay order and impose the stayed discipline (revocation/suspension) of Respondent's license.

22 If during the period of probation, an accusation or petition to revoke probation has been
23 filed against Respondent's license or the Attorney General's Office has been requested to prepare
24 an accusation or petition to revoke probation against Respondent's license, the probationary
25 period shall automatically be extended and shall not expire until the accusation or petition has
26 been acted upon by the Board.

27 13. **License Surrender.** During Respondent's term of probation, if he ceases
28 practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of

1 probation, Respondent may surrender his license to the Board. The Board reserves the right to
2 evaluate Respondent's request and to exercise its discretion whether to grant the request, or to
3 take any other action deemed appropriate and reasonable under the circumstances, without further
4 hearing. Upon formal acceptance of the tendered license and wall certificate, Respondent will no
5 longer be subject to the conditions of probation.

6 Surrender of Respondent's license shall be considered a disciplinary action and shall
7 become a part of Respondent's license history with the Board. A registered nurse whose license
8 has been surrendered may petition the Board for reinstatement no sooner than the following
9 minimum periods from the effective date of the disciplinary decision:

10 (1) Two years for reinstatement of a license that was surrendered for any reason other
11 than a mental or physical illness; or

12 (2) One year for a license surrendered for a mental or physical illness.

13 14. **Physical Examination.** Within 45 days of the effective date of this
14 Decision, Respondent, at his expense, shall have a licensed physician, nurse practitioner, or
15 physician assistant, who is approved by the Board before the assessment is performed, submit an
16 assessment of the Respondent's physical condition and capability to perform the duties of a
17 registered nurse. Such an assessment shall be submitted in a format acceptable to the Board. If
18 medically determined, a recommended treatment program will be instituted and followed by the
19 Respondent with the physician, nurse practitioner, or physician assistant providing written reports
20 to the Board on forms provided by the Board.

21 If Respondent is determined to be unable to practice safely as a registered nurse, the
22 licensed physician, nurse practitioner, or physician assistant making this determination shall
23 immediately notify the Board and Respondent by telephone, and the Board shall request that the
24 Attorney General's office prepare an accusation or petition to revoke probation. Respondent shall
25 immediately cease practice and shall not resume practice until notified by the Board. During this
26 period of suspension, Respondent shall not engage in any practice for which a license issued by
27 the Board is required until the Board has notified Respondent that a medical determination
28 permits Respondent to resume practice. This period of suspension will not apply to the reduction

1 of this probationary time period.

2 If Respondent fails to have the above assessment submitted to the Board within the 45-day
3 requirement, Respondent shall immediately cease practice and shall not resume practice until
4 notified by the Board. This period of suspension will not apply to the reduction of this
5 probationary time period. The Board may waive or postpone this suspension only if significant,
6 documented evidence of mitigation is provided. Such evidence must establish good faith efforts
7 by Respondent to obtain the assessment, and a specific date for compliance must be provided.
8 Only one such waiver or extension may be permitted.

9 **15. Participate in Treatment/Rehabilitation Program for Chemical**
10 **Dependence.** Respondent, at his expense, shall successfully complete during the probationary
11 period or shall have successfully completed prior to commencement of probation a Board-
12 approved treatment/rehabilitation program of at least six months duration. As required, reports
13 shall be submitted by the program on forms provided by the Board. If Respondent has not
14 completed a Board-approved treatment/rehabilitation program prior to commencement of
15 probation, Respondent, within 45 days from the effective date of the decision, shall be enrolled in
16 a program. If a program is not successfully completed within the first nine months of probation,
17 the Board shall consider Respondent in violation of probation.

18 Based on Board recommendation, each week Respondent shall be required to attend at least
19 one, but no more than five 12-step recovery meetings or equivalent (e.g., Narcotics Anonymous,
20 Alcoholics Anonymous, etc.) and a nurse support group as approved and directed by the Board.
21 If a nurse support group is not available, an additional 12-step meeting or equivalent shall be
22 added. Respondent shall submit dated and signed documentation confirming such attendance to
23 the Board during the entire period of probation. Respondent shall continue with the recovery plan
24 recommended by the treatment/rehabilitation program or a licensed mental health examiner
25 and/or other ongoing recovery groups.

26 **16. Abstain from Use of Psychotropic (Mood-Altering) Drugs.** Respondent
27 shall completely abstain from the possession, injection or consumption by any route of all
28 controlled substances and all psychotropic (mood altering) drugs, including alcohol, except when

1 the same are ordered by a health care professional legally authorized to do so as part of
2 documented medical treatment. Respondent shall have sent to the Board, in writing and within
3 fourteen (14) days, by the prescribing health professional, a report identifying the medication,
4 dosage, the date the medication was prescribed, the Respondent's prognosis, the date the
5 medication will no longer be required, and the effect on the recovery plan, if appropriate.

6 Respondent shall identify for the Board a single physician, nurse practitioner or physician
7 assistant who shall be aware of Respondent's history of substance abuse and will coordinate and
8 monitor any prescriptions for Respondent for dangerous drugs, controlled substances or mood-
9 altering drugs. The coordinating physician, nurse practitioner, or physician assistant shall report
10 to the Board on a quarterly basis Respondent's compliance with this condition. If any substances
11 considered addictive have been prescribed, the report shall identify a program for the time limited
12 use of any such substances.

13 The Board may require the single coordinating physician, nurse practitioner, or physician
14 assistant to be a specialist in addictive medicine, or to consult with a specialist in addictive
15 medicine.

16 17. **Submit to Tests and Samples.** Respondent, at his expense, shall
17 participate in a random, biological fluid testing or a drug screening program which the Board
18 approves. The length of time and frequency will be subject to approval by the Board.
19 Respondent is responsible for keeping the Board informed of Respondent's current telephone
20 number at all times. Respondent shall also ensure that messages may be left at the telephone
21 number when he is not available and ensure that reports are submitted directly by the testing
22 agency to the Board, as directed. Any confirmed positive finding shall be reported immediately
23 to the Board by the program and Respondent shall be considered in violation of probation.

24 In addition, Respondent, at any time during the period of probation, shall fully cooperate
25 with the Board or any of its representatives, and shall, when requested, submit to such tests and
26 samples as the Board or its representatives may require for the detection of alcohol, narcotics,
27 hypnotics, dangerous drugs, or other controlled substances.

28 If Respondent has a positive drug screen for any substance not legally authorized and not

1 reported to the coordinating physician, nurse practitioner, or physician assistant, and the Board
2 files a petition to revoke probation or an accusation, the Board may suspend Respondent from
3 practice pending the final decision on the petition to revoke probation or the accusation. This
4 period of suspension will not apply to the reduction of this probationary time period.

5 If Respondent fails to participate in a random, biological fluid testing or drug screening
6 program within the specified time frame, Respondent shall immediately cease practice and shall
7 not resume practice until notified by the Board. After taking into account documented evidence
8 of mitigation, if the Board files a petition to revoke probation or an accusation, the Board may
9 suspend Respondent from practice pending the final decision on the petition to revoke probation
10 or the accusation. This period of suspension will not apply to the reduction of this probationary
11 time period.

12 18. **Mental Health Examination.** Respondent shall, within 45 days of the
13 effective date of this Decision, have a mental health examination including psychological testing
14 as appropriate to determine his capability to perform the duties of a registered nurse. The
15 examination will be performed by a psychiatrist, psychologist or other licensed mental health
16 practitioner approved by the Board. The examining mental health practitioner will submit a
17 written report of that assessment and recommendations to the Board. All costs are the
18 responsibility of Respondent. Recommendations for treatment, therapy or counseling made as a
19 result of the mental health examination will be instituted and followed by Respondent.

20 If Respondent is determined to be unable to practice safely as a registered nurse, the
21 licensed mental health care practitioner making this determination shall immediately notify the
22 Board and Respondent by telephone, and the Board shall request that the Attorney General's
23 office prepare an accusation or petition to revoke probation. Respondent shall immediately cease
24 practice and may not resume practice until notified by the Board. During this period of
25 suspension, Respondent shall not engage in any practice for which a license issued by the Board
26 is required, until the Board has notified Respondent that a mental health determination permits
27 Respondent to resume practice. This period of suspension will not apply to the reduction of this
28 probationary time period.

1 If Respondent fails to have the above assessment submitted to the Board within the 45-day
2 requirement, Respondent shall immediately cease practice and shall not resume practice until
3 notified by the Board. This period of suspension will not apply to the reduction of this
4 probationary time period. The Board may waive or postpone this suspension only if significant,
5 documented evidence of mitigation is provided. Such evidence must establish good faith efforts
6 by Respondent to obtain the assessment, and a specific date for compliance must be provided.
7 Only one such waiver or extension may be permitted.

8 19. **Therapy or Counseling Program.** Respondent, at his expense, shall
9 participate in an on-going counseling program until such time as the Board releases him from this
10 requirement and only upon the recommendation of the counselor. Written progress reports from
11 the counselor will be required at various intervals.

12
13 ACCEPTANCE

14 I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the
15 stipulation, and the effect it will have on my Registered Nurse License. I enter into this
16 Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree
17 to be bound by the Decision and Order of the Board of Registered Nursing.

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19 DATED: 10/29/09

Gilbert Hinojosa R.N.
20 GILBERT HINOJOSA, R.N.
21 Respondent
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Dated:

Oct. 21, 2005

EDMUND G. BROWN JR.
Attorney General of California
JAMES M. LEDAKIS
Supervising Deputy Attorney General

Supervising Deputy Attorney General

SD2007802151
Stipulation.rtf

Exhibit A

Accusation No. 2009-86

1 EDMUND G. BROWN JR., Attorney General
of the State of California

2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General

3 BEN E. JOHNSON
Deputy Attorney General

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8 Facsimile: (619) 645-2061

9 Attorneys for Complainant

10 **BEFORE THE**
BOARD OF REGISTERED NURSING
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:

Case No. 2009-86

13 **GILBERT HINOJOSA,**
14 **aka: GILBERTO HINOJOSA,**
GILBERTO ORTIZ HINOJOSA

Post Office Box 955
15 Mecca, California 92254

16 Mailing Address:
91576 Third Street
17 Mecca, California 92254

18 Registered Nurse License No. RN 456896

19 Respondent.

FIRST AMENDED

A C C U S A T I O N

20 Ruth Ann Terry, M.P.H, R.N ("Complainant") alleges:

21 **PARTIES**

22 1. Complainant brings this Accusation solely in her official capacity as the
23 Executive Officer of the Board of Registered Nursing ("Board"), Department of Consumer
24 Affairs.

25 2. On or about August 31, 1990, the Board issued Registered Nurse License Number
26 RN 456896 ("license") to Gilbert Hinojosa, also known as Gilberto Hinojosa, and
27 Gilberto Ortiz Hinojosa ("Respondent"). The license will expire on November 30, 2009, unless
28 renewed.

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2 **STATUTORY PROVISIONS**

3 3. Section 2750 of the Business and Professions ("Code") provides, in pertinent part,
4 that the Board may discipline any licensee, including a licensee holding a temporary or an
5 inactive license, for any reason provided in Article 3 (commencing with Code section 2750) of
6 the Nursing Practice Act.

7 4. Code Section 492 states:

8 Notwithstanding any other provision of law, successful completion of
9 any diversion program under the Penal Code, or successful completion of an
10 alcohol and drug problem assessment program under Article 5 (commencing with
11 Section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not
12 prohibit any agency established under Division 2 (commencing with Section 500)
13 of this code or any initiative act referred to in that division, from taking
14 disciplinary action against a licensee or from denying a license for professional
15 misconduct, notwithstanding that evidence of that misconduct may be recorded in
16 a record pertaining to an arrest.

17 This section shall not be construed to apply to any drug diversion program
18 operated by any agency established under Division 2 (commencing with Section
19 500) of this code, or any initiative act referred to in that division.

20 5. Code section 2764, states, in pertinent part, that the expiration of a license shall
21 not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the
22 licensee or to render a decision imposing discipline on the license. Under Code section 2811,
23 subdivision (b), the Board may renew an expired license at any time within eight years after the
24 expiration.

25 6. Code section 118, subdivision (b), provides that the suspension, expiration,
26 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with
27 a disciplinary action during the period within which the license may be renewed, restored,
28 reissued or reinstated.

7. Code section 2761 states, in pertinent part:

The board may take disciplinary action against a certified or licensed
nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not
limited to. . . .

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8. Code section 2762 states, in pertinent part:

3 In addition to other acts constituting unprofessional conduct within the
4 meaning of this chapter it is unprofessional conduct for a person licensed under
this chapter to do any of the following:

5 (a) Obtain or possess in violation of law, or prescribe, or except as
6 directed by a licensed physician and surgeon, dentist, or podiatrist administer to
himself or herself, or furnish or administer to another, any controlled substance as
7 defined in Division 10 (commencing with Section 11000) of the Health and
Safety Code or any dangerous drug or dangerous device as defined in Section
8 4022.

9 9. Code section 4022 states, in pertinent part,

10 Dangerous drug or dangerous device means any drug or device unsafe for
11 self-use, except veterinary drugs that are labeled as such, and includes the
following:

12 (c) Any other drug or device that by federal or state law can be
13 lawfully dispensed only on prescription or furnished pursuant to Section 4006.

14 10. Code section 125.3 provides, in pertinent part, that the Board may request the
15 administrative law judge to direct a licensee found to have committed a violation or violations
16 of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
17 enforcement of the case.

18 11. Health and Safety Code section 11377 (a) states, in pertinent part:

19 Except as authorized by law and as otherwise provided in subdivision (b)
20 of Section 11375, ..., every person who possesses any controlled substance which
is ..., or (5) specified in subdivision (d), (e), or (f) of Section 11055, unless upon
21 the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to
practice in this state, shall be punished by imprisonment in a county jail for a
22 period of not more than one year or in the state prison.

23 DRUGS

24 "Methamphetamine" is a Schedule II controlled substance, as designated by
25 Health and Safety Code section 11055, subdivision (d)(2), and is a dangerous drug within the
26 meaning of Code section 4022.

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FIRST CAUSE FOR DISCIPLINE

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(January 9, 2006-Illegal Possession of Methamphetamine)

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12. Respondent is subject to disciplinary action under Code section 2762 (a) because, while licensed as a registered nurse, Respondent unlawfully possessed "Methamphetamine", a Schedule II controlled substance, in violation of Health and Safety Code section 11377 and Business and Professions Code section 4022. The circumstances are as follows.

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13. On January 9, 2006, San Diego Police Officers, during routine patrol in San Diego, California, observed Respondent standing in front of a parked vehicle with its hood raised, frantically checking engine parts. The officers approached Respondent, requested identification and conducted a records search, which produced an outstanding bench warrant for Respondent's arrest. After arresting Respondent, the officers removed from Respondent's right front pant's pocket a small white plastic container that contained "Methamphetamine".

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17. On January 11, 2006, in San Diego County Superior Court, Case Number M979966, Respondent pled no contest to the illegal possession of drugs in violation of Health and Safety Code section 11377 as a misdemeanor. Pursuant to Penal Code section 1000, Respondent's application for the Deferred Entry of Judgment Program was approved and he was ordered to report to the Assessment Unit by February 8, 2006.

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18. On August 21, 2006, a bench warrant was issued for Respondent's arrest due to his failure to comply with the terms and conditions of the Deferred Entry of Judgment Program. Later, the bench warrant was recalled. On January 9, 2008, the San Diego County Superior Court re-referred Respondent to the Deferred Entry of Judgment Program for a new 24 month term. On June 10, 2008, Respondent successfully completed the Riverside County Certified PC-1000 Drug Diversion Program.

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WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

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1. Revoking or suspending Registered Nurse License Number RN 456896 issued to Gilbert Hinojosa, also known as Gilberto Hinojosa and Gilberto Ortiz Hinojosa;

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2. Ordering Gilbert Hinojosa, also known as Gilberto Hinojosa and Gilberto Ortiz Hinojosa, to pay the Board the reasonable costs of the investigation and enforcement of this case pursuant to Code section 125.3; and,

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3. Taking such other and further action as deemed necessary and proper.

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DATED: 10/31/08



RUTH ANN TERRY, M.P.H., R.N.
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant